84-1301

Office-Supreme Court, U.S.
FILED
FEB 11 1985
ALEXANDER L. STEVAS,
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO._____

John C. Amis, Jr.
Petitioner

v.

DICK STEELE, Lee County
Tax Collector, and LEE COUNTY,
a political subdivision of
the State of Florida,
Respondents

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
For the Eleventh Circuit

James F. Ponsoldt
(Counsel of Record)
305 Great Oak Drive
Athens, Georgia 30605
(404) 542-7668 or 542-7669

John E. Hendry
2958 Cranford Avenue
Fort Myers, Florida 33901
(813) 334-6645

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

QUESTIONS PRESENTED iv

OPINIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2

STATEMENT 3

REASONS FOR GRANTING THE PETITION 8

CONCLUSION 19

APPENDIX A
United States Court of Appeals for the Eleventh Circuit, Opinion ..... App. A

APPENDIX B
United States District Court for the Middle District of Florida, Order ..... App. B

APPENDIX C
United States Court of Appeals for the Eleventh Circuit, Judgment ..... App. C

APPENDIX D
United States Court of Appeals for the Eleventh Circuit, Petition for Rehearing Denied ..... App. D

TABLE OF AUTHORITIES

Cases	Page
Addickes v. S. H. Kress & Co., 398 U.S. 144 (1970)	11
Alaniz v. San Isidro Ind. School Dist., 742 F.2d 207 (5th Cir. 1984)	13
Anderson v. Central Point School Dist. No. 6, 746 F.2d 505 (9th Cir. 1984)	13
Briggs v. Malley, 748 F.2d 715 (1st Cir. 1984)	14, 17
Brown v. Gamm, 525 F.2d 60 (8th Cir. 1975)	21
Church of Scientology of Calif. v. Cazares, 638 F.2d 1272 (5th Cir. 1981)	18, 19, 20
Connick v. Myers, 461 U.S. 138 (1983)	11, 13
Deary v. Three Un-named Police Officers, 746 F.2d 185 (3rd Cir. 1984)	14, 17
Fromberg, Inc. v. Gross Mfg. Co., 328 F.2d 803 (9th Cir. 1964)	18
Hanson v. Aetna Life & Casualty Co., 625 F.2d 573 (5th Cir. 1980)	18, 19
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	11, 13, 14, 15
Henderson v. Huecher, 744 F.2d 640 (8th Cir. 1984)	14
Hinkle v. Christenson, 733 F.2d 74 (8th Cir. 1984)	13
Johnson Grain Co. v. Chemical Interchange Co., 541 F.2d 207 (8th Cir. 1976)	20
Jones v. Dodson, 727 F.2d 1329 (4th Cir. 1984)	13
Jurgensen v. Fairfax County, Va., 745 F.2d 868 (4th Cir. 1984)	12, 16
Landau v. Barter Const. Co., 657 F.2d 158 (7th Cir. 1981)	20
Mt. Healthy Board of Education v. Doyle, 429 U.S. 274 (1977)	16
Ness v. Marshall, 660 F.2d 517 (3rd Cir. 1981)	15

Northern Calif. Power Agency v. Grace Geothermal Corp., 105 S. Ct. 459 19

Nunez v. Superior Oil Co., 572 F.2d 1119 (5th Cir. 1979) . 17

Phillips v. Vandygriff, 711 F.2d 1217 (5th Cir. 1983) 15

Robb v. Philadelphia, 733 F.2d 286 (3rd Cir. 1984) 14

Zook v. Brown, 748 F.2d 1161 (7th Cir. 1984) 13

Other Authorities:

Documents Illustrative of the Formation of the Union of the American States, pp. 627-28, G.P.O. 1927 4

R. Sherman, *A Caveat Against Injustice*, Spencer Judd, Pub. 1982 4

QUESTIONS PRESENTED

In this civil rights action, in which plaintiff alleged deprivations of rights protected by the First and Fourteenth Amendments and requested a jury trial, the Court of Appeals held that the entry of summary judgment by the District Court, without an opinion or explanation of governing legal principles, was proper and jury trial unnecessary. The Court so held notwithstanding that the parties had correctly stipulated that material factual issues concerning the motive and good cause for defendant's injurious conduct were genuinely in dispute. This petition accordingly presents important procedural questions about the proper role of and limitations upon a Federal trial judge in preempting a jury and resolving disputes between a citizen and his local government, when that citizen alleges non-employment related retaliation for his expression of disfavored political views on matters of public importance.

1. Whether a stipulation by the parties, plainly supported by the record, that material facts remain in dispute concerning defendant's motive, reasonableness, and good faith in taking adverse action against the plaintiff precludes the District Court from granting summary judgment and pre-empting a jury trial in a federal civil rights action.

2. Whether due process, combined with the statutory right of appeal, require that federal trial judges, like administrative agencies, indicate, however informally, the legal principles or reasons governing the grant of summary judgment, in order to preserve the right to meaningful appellate review.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. 84-

JOHN C. AMIS, JR.
Petitioner

v.

DICK STEELE, Lee County
Tax Collector, and LEE COUNTY,
a political subdivision of
the State of Florida,
Respondents

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
For the Eleventh Circuit

OPINIONS BELOW

The opinion of the court of appeals (App. A, **infra**) is not reported. The Order of The District Court granting summary judgment, without opinion (App. B, **infra**), is not reported.

JURISDICTION

The judgment of the court of appeals (App. C, **infra**) was entered on November 29, 1984. The court of appeals' order denying a petition for rehearing and suggestion of rehearing en banc (App. D, **infra**) was entered on November 16, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

STATUTES INVOLVED

Rule 56(c), F.R.Civ.P., provides in relevant part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, . . . together with the affidavits, if any, show that there is no genuine issue as to any material fact . . ."

The Seventh Amendment to the United States Constitution provides in relevant part: ". . . the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any court of the United States . . ."

42 U.S.C. 1983 provides in relevant part: "Every person who, under color of any statute, . . . custom, or usage of any state, . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law . . ."

The First Amendment to the Constitution of the United States provides in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble . . ."

The Fourteenth Amendment to the Constitution of the United States provides in relevant part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law;"

STATEMENT

1. Petitioner John C. Amis, Jr. ("Amis") is a leader (in Lee County, Florida) of a quasi-political organization known as the "Constitutionalist" movement. Members of that organization believe strongly that the primary virtue of the American political system, as envisioned by the framers of the United States Constitution, is its insistence upon limited government. They believe that individual rights are best preserved by structural limitations upon the growth and power of government. These views are not shared by most government officials.

In particular, Amis and his organization have been active and vocal critics of certain allegedly illegal governmental policy, including particularly the abolition of the gold standard for currency and the acceptance by the States of federal reserve notes as legal tender for the mandatory payment of state debts (R. 48-51) (page references are to the one-volume record in the Court of Appeals). Amis has sought to dramatize his opposition to such policy, which allows government more freedom to spend money and thus expand its power, by submitting "public office money certificates" — a form of promissory note (R. 47, 51) — in response to debts, including property taxes, that were not voluntarily acquired, and has corresponded with defendant at length about such conduct (R. 49, 56).

The defendant, Dick Steele, in his capacity as Lee County Tax Collector, kept a "three-inch file on Mr. Amis and a few other people . . ." involved in plaintiff's organization (R. 55, 50) who were also involved in such symbolic demonstrations. In contention, as indicated above, was the constitutionality, under Article I, section 10 of the U.S. Constitution, and the legality, under 31 U.S.C. 371, of the adoption and use by the States of federal reserve notes as legal tender for the mandatory payment of state debts when not tied to a gold or silver standard.

Plaintiff Amis and his organization, relying upon the writings of Roger Sherman and the Constitutional history of Article I, section 10 (which Sherman drafted),

believe that the specific Constitutional prohibition upon states from making anything but gold and silver legal tender was absolute and intended to limit the States' rights to use federal reserve notes, thereby necessarily also limiting the power of Congress. See, *e.g.*, *Documents Illustrative of The Formation of The Union of The American States*, pp. 627-628, Government Printing Office, 1927, and R. Sherman, *A Caveat Against Injustice*, Spencer Judd, pub. 1982.

2. Although plaintiff declined to pay certain of his property taxes with federal reserve notes as a matter of protest, his correspondence to defendant specifically identified the limited nature and extent of his protest (R. 48, 51); plaintiff for many years voluntarily had purchased tax certificates on tax-delinquent properties at public auction from the Tax Collector and paid for them with money, as he paid other voluntary debts (R. 65). There was no suggestion in the record that plaintiff was unable or unwilling to continue to pay such voluntarily acquired debts (R. 51, 65).

As of 1982, Amis had submitted the aforementioned promissory notes rather than legal tender in payment of property taxes on real property which he owned in Lee County. Accordingly, defendant had listed those taxes as delinquent and scheduled the real property for sale at public auction. The instant litigation did not challenge such conduct by defendant.

3. In May, 1982, defendant conducted another public auction and sale of tax certificates on tax-delinquent county property (R. 27, 65). Defendant Dick Steele, who supervised and controlled that public auction, instructed an employee at the time of the auction to refuse to provide plaintiff Amis with a bid number (necessary to participate in the auction) unless plaintiff first deposited in advance the total amount of money he intended to bid (R. 66). When plaintiff objected, the employee, without explanation, confirmed and enforced the instruction (R. 42). Defendant Steele had given no prior notice regarding such an unauthorized requirement and declined to communicate directly with plaintiff to explain or discuss (and therefore to compromise) the basis for his decision (R. 41-43).

Moreover, such requirement was never imposed upon any other person (R. 2, 28) and conflicted with the governing Florida statute (R. 58, 61), which authorizes the requirement of a reasonable deposit (10%) after the bidding (R. 61) for good cause.

Amis had made arrangements to have available (although not in cash on his person) $40,000 to be used in purchasing tax certificates (R. 66). In common with his prior practice, Amis had every intention of fully paying for such voluntarily acquired debts in legal tender. The peremptory decision of defendants precluded Amis from bidding freely, in common with all other citizens, and from purchasing and profiting from the certificates as he had in the past (R. 3).

4. Amis filed a civil action on December 12, 1982 against Dick Steele, tax collector of Lee County, Florida, and Lee County. The complaint alleged that defendant Steele, acting under color of state law, individually and on behalf of Lee County, deprived plaintiff of rights protected by *inter alia*, the First and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. 1983.

The complaint sought damages as well as equitable relief and requested a jury trial (R. 1-4).

On January 21, 1983, defendants sought dismissal of the complaint for failure to state a claim generally and on the ground, *inter alia*, that Lee County was not a "person" and thus could not be sued under 42 U.S.C. 1983 (R. 9). The District Court (Hon. George Carr) denied the motions on March 15, 1983 (R. 22-23), citing governing precedent.

After plaintiff Amis and defendant Steele were deposed and the parties entered into a pre-trial stipulation (R. 27-34), defendants Lee County and Dick Steele in his official capacity moved for summary judgment on July 7, 1983 (R. 35), attaching the affidavit of defendant Steele (R. 41). Plaintiff submitted his own affadavit (R. 65) in response to defendant's motion.

At a brief non-evidentiary pre-trial hearing on December 13, 1983 (R. 75-90) the Court (Hon. Robert Morgan, sitting by designation) directed the entry of an

order granting summary judgment for both defendants (R. 88), including defendant Steele in his individual capacity. That Order, without an accompanying opinion or memorandum, was entered on January 9, 1984 (R. 68). Final judgment on the Order was subsequently entered on February 8, 1984 (R. 71).

Plaintiff's complaint, deposition, and affidavit had alleged that defendant singled him out for discriminatory treatment in bad faith response to and in retaliation for plaintiff's leadership in the criticism of government policy, as described above, to inhibit plaintiff's expression of his First Amendment rights. Defendant effectively acknowledged the validity of this claim (R. 3, 28, 55) but asserted justification, arguing that he acted properly and in good faith to assure the payment for the auctioned debts, although no other, less vocal member of plaintiff's organization was similarly treated.

Plaintiff's complaint alternatively alleged that, even if defendant's motive was not retaliatory but merely was to assure valid payment of the amount bid at auction, defendant acted arbitrarily and unreasonably, denying plaintiff his procedural due process and equal protection rights, since the briefest form of notice, hearing, or communication by defendant could have resolved any legitimate question regarding the intention of plaintiff to pay for delinquent tax certficates which he successfully bid upon. Proof that plaintiff had bid upon and paid for tax certificates many times in the past would have undercut the alleged explanation of the disparate treatment of plaintiff at the public sale.

5. The District Court's grant of summary judgment contains no explanation and is accompanied by no opinion (App. B) (R. 68). The closest expression of a reason for the decision by the Court exists in the brief non-evidentiary hearing transcript:

> . . . I don't think separating him from the rest of the population — I don't know of anything in the Constitution that says I can't be separated from the rest of the population if what I am doing is wrong . . .

> (R. 83) . . . I can't get very excited about this lawsuit. If he thinks it is greatly important, I think what I should do is enable him to take it to the Court of Appeals on a short record rather than waste everybody's time with a trial of issues (R. 85).

The stipulation (R. 31) signed by both parties specifically had identified as "fact issues remaining to be litigated" the questions (1) whether defendant, by effectively excluding Amis from participation in the public auction, was acting in good faith, or for the purpose of retaliating against Amis' exercise of his First Amendment rights, and (2) whether defendant had good cause for his action.

Moreover, defendant represented to the Court while seeking summary judgment that, "The only question [sic] then remaining for determination is whether that request [by defendant for a 100% deposit prior to bidding] was justified and whether it was done in good faith and, if so, whether such request resulted in any violation of plaintiff's constitutional rights." (R. 37).

6. The Court of Appeals affirmed (App. A, *supra*) and then denied rehearing (App. D, *supra*).

Although the District Court's Order did not identify the legal principles governing its grant of summary judgment, the Court of Appeals engaged in a judicious interpretation, without the benefit of oral argument (App. A-1, *supra*). The Court did not hold that Amis' conduct did not constitute protected speech. Nor did the Court hold that defendant was entitled to immunity or that his conduct did not deprive Amis of a protected property or liberty interest.

Rather, the Court of Appeals reached two conclusions, resolving the two primary disputes between the parties: 1. the motivating factor for defendant's action against Amis was not retaliatory but rather was simply to assure payment in legal tender of the amount bid (App. A-2-3); and 2. defendant did have "good cause" for his action (App. A-2).

In other words, the Court of Appeals held that questions regarding defandant's motivation and good cause, although stipulated to be in dispute, were not questions of fact for a jury.

The Court of Appeals also held that the District Court's failure to provide an explanation or to identify the legal principles governing its decision did not deprive Amis of meaningful appellate review (App. A-3).

Reasons For Granting The Petition

The federal courts are overflowing with civil rights actions brought by citizens against local or state governments or their employees pursuant to 42 U.S.C. 1983. A large number of those actions, like the instant case, seek redress for injurious conduct by government which was allegedly in retaliation for First Amendment-protected activity and/or was unreasonable and without procedural protections.

Despite this Court's attempts during the past ten years to provide guidance to the lower courts regarding such litigation and perhaps curtail its increase, a result which is unlikely to occur without the support of Congress, this Court has not yet had an opportunity to focus upon those issues of the greatest practical importance to trial judges and litigators — the respective roles of the judge and jury, and the obligations upon a trial judge in granting summary judgment — because such issues are usually "fact-bound" and thus not deemed appropriate for certiorari. And yet it is resolution of just such issues which is most likely to aid the lower courts in the efficient and just processing of Civil Rights cases.

The present case is a particularly appropriate vehicle for this Court to provide guidance to the lower courts on these recurring and practically important questions because:

1. In this case, the parties have stipulated and the defendant has acknowledged that questions concerning his motivation and good cause for taking the challenged action are in dispute;

2. This case is relatively free of the kind of highly-charged publicity and extreme set of facts which often result in "bad" or confusing precedent;

3. The plaintiff, Amis, believes that he has been discriminated against because of his expression of disfavored political views on matters of Constitutional importance that go to the core of our political system — structural limitations upon the growth and power of government;

4. The substantive First Amendment and due process conflict between citizen and government arises in this case outside of the law enforcement or government-employment contexts, in which government has been accorded more flexibility in dealing with criminal defendants, prisoners, and employees; and

5. As will be indicated below, the lower courts are in disarray and conflict concerning the two questions presented by this petition.

I. The Lower Courts Are In Conflict Concerning Whether The Court Or The Jury Should Resolve Questions Of Governmental Motivation, Reasonableness, And Good Cause In A Civil Rights Case.

As described above, the Court of Appeals held in this case that the District Court correctly determined that defendant's motive in this case was proper — to assure payment to the county of the amount bid at auction — and that defendant had "good cause" to act and acted reasonably under the circumstances without affording notice or any form of a hearing to Amis before excluding him from bidding upon tax-delinquent property.

Amis, on the other hand, had argued on appeal that resolution of those questions was for the jury, not the Court, under the Seventh Amendment and Rule 56(c), F.R.Civ.P., particularly in light of the parties' stipulation and defendant's concession concerning the existence of a genuine factual dispute.

The undisputed facts that defendant acknowledged that he was keeping a "three-inch file" on Amis and his organization, that no other person ever had been

similarily treated, and that Amis always had paid promptly for tax-delinquent property which he had successfully bid upon in the past, supported Amis' contention that defendant's motive was retaliatory and that defendant did not act reasonably or for good cause.

The starting point for determining the correctness of the Court of Appeals' decision that a jury question was not involved in this case is, perhaps, **Addickes v. S. H. Kress & Co.**, 398 U.S. 144, 90 S.Ct. 1598 (1970), in which this Court squarely held that summary judgment is inappropriate where the record, examined in the light most favorable to the party opposing the motion, shows any material facts in dispute, 90 S.Ct. at 1609. Recognition of that rule, however, begs the question of whether government motivation and good cause are questions of fact for the jury or of law for the Court.

Complicating the issue are this Court's decisions in **Harlow v. Fitzgerald**, 457 U.S. 800 (1982) and **Connick v. Myers**, 461 U.S. 138 (1983), technically irrelevant to this case but contributing to a misunderstanding. Those cases, arising in the law enforcement and government employment contexts, held that the legality (or appropriateness for qualified immunity) of injurious government conduct is to be determined by the Court on an "objective reasonableness" standard and that, similarly, whether a government employee's speech is truly protected must be determined by the Court after balancing several factors.

One lower Court, the Fourth Circuit (with one judge dissenting) consistent with the Eleventh Circuit in this case, has read those decisions as requiring the trial Court in a civil rights case to determine questions of motivation and good cause as a matter of law:

> In order to establish a cause of action by a public employee for an alleged wrongful discharge or demotion in violation of the employee's First Amendment rights, the plaintiff-employee must demonstrate (1) that the speech complained of qualified as protected speech or activity and

> (2) that such protected speech or activity was the "motivating" or "but for" cause for his discharge or demotion. That this is the appropriate formula to be applied in determining liability in such a case was authoritatively settled by **Mt. Healthy City School Bd. of Ed. v. Doyle**, 429 U.S. 274, 287, 97 S.Ct. 568, 576 50 L.Ed.2d 471 (1977), in which the Supreme Court said that a public employee asserting a violation of his right of free speech in connection with his discharge or demotion has the burden of "show[ing] that his conduct was constitutionally protected, and that this conduct was a 'substantial factor' — or, to put it in other words, that it was a 'motivating factor' in the [employer's] decision not to rehire [or to discharge or to demote] him." This test was later refined in **Givhan v. Western Line Consol. School Dist.**, 439 U.S. 410, 417, 99 S.Ct. 693, 697, 58 L.Ed.2d 619 (1979), as a "but for" standard. And the resolution of these two critical issues is a matter of law and not of fact. **Connick v. Myers**, 461 U.S. 138, 103 S.Ct. 1684, 1690, n. 7, 75 L.Ed.2d 708 (1983).

Jurgensen v. Fairfax County, Va., 745 F.2d 868, 878 (4th Cir. 1984).

On the other hand, the Fifth Circuit recently affirmed the denial of summary judgment and a jury verdict for plaintiff where the precise issue resolved by the jury was whether "a substantial or motivating factor in the District's decision to discharge plaintiff was her political activities and associations," **Alaniz v. San Isidro Ind. School District**, 742 F.2d 207, 208 (5th Cir. 1984). Accord, **Anderson v. Central Point School Dist. No. 6**, 746 F.2d 505 (9th Cir. 1984); **Jones v. Dodson**, 727 F.2d 1329, 1336 (1984); **Hinkle v. Christenson**, 733 F.2d 74, 77 (8th Cir. 1984).

A recent Seventh Circuit case illustrates the tension created between the objective reasonableness standard (a question of law) created by **Harlow** for determinations of qualified immunity, on one hand, and factual questions regarding whether the motivation for government action was truly retaliatory and thus First-Amendment abridging, on the other. See, **Zook v. Brown**, 748 F.2d 1161 (7th Cir. 1984). The Court held as follows:

> The defendants moved for summary judgment only on the question of immunity, which, as we have noted, now involves solely an examination of the state of the relevant law. In the context of that motion, they did not attempt to establish the absence of disputed facts relevant to other issues in the case.
>
> As we noted earlier, analysis of government employees' claims that they have suffered retaliation for engaging in constitutionally-protected speech involves a consideration of a myriad of factors aimed at defining the context in which the expression occurred and the precise nature of the competing governmental concerns. In its most recent discussion of public employee speech, the Supreme Court discussed several of these factors, including (1) whether the employee expressions under consideration impeded his ability to perform his duties, (2) the degree to which the employee's expression involved matters of public concern and the gravity of that concern, (3) the time, place, and manner of the expressions, and (4) the employee's motives in voicing the expressions at issue. **Connick v. Myers**, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983).
>
> Our review of the record convinces us that several factual areas critical to an analysis under **Pickering** and its progeny are insufficiently developed to allow judgment for defendants as a matter of law on all issues remaining in the case. . . .

> We agree that the individual defendants are entitled to qualified immunity, and we also agree that one of the rules, which prohibits officers from making public statements when acting as representatives of the Sheriff's Department, is facially valid. We hold, however, that material questions of fact remain that preclude judgment for the defendants as a matter of law on the question of the constitutionality of the rules as applied to Zook and that the record is insufficiently developed to allow a determination that the remaining rule is constitutional on its face. We therefore remand the case to the district court for further consideration. 748 F.2d at 1164-1165.

See also, in accord, **Robb v. City of Philadelphia**, 733 F.2d 286 (3rd Cir. 1984) (affirming summary judgment for city on due process ground but reversing and remanding on First Amendment issue focusing upon question of motivation), and **Henderson v. Huecker**, 744 F.2d 640 (8th Cir. 1984) (reversing grant of summary judgment for defendant and remanding on issue of whether First Amendment protected conduct was a motivating factor in defendant's injurious action).

Thus the lower Courts, except for the Fourth and Eleventh Circuits, as noted above, have recognized the distinction between questions of law under **Harlow** (qualified immunity for defendant) and questions of fact for the jury (defendant's motivation). Moreover, the lower courts, except for the Eleventh Circuit in this case (Pet. App. A-2) also recognize that the question of whether a defendant had good cause for his conduct also is one of fact for the jury. See, **Briggs v. Malley**, 748 F.2d 715, 717-18 (1st Cir. 1984). See also, **Deary v. Three Un-Named Police Officers**, 746 F.2d 185 (3rd Cir. 1984), where the Court held

> Thus, on the facts and circumstances of this case, a finding of probable cause — which would preclude the finding of a constitutional violation for section 1983 purposes — and a

> finding of entitlement to qualified immunity — which would preclude liability even if the defendants had violated Deary's constitutional rights — both turn on the reasonableness of the defendant police officers' actions in arresting and detaining Deary — a determination which we have held presents a question of fact for the jury. . . .
>
> We do not hold that every civil case involving an issue of probable cause must be tried to a jury and cannot be resolved on summary judgment. See **Scott v. Donovan**, 539 F.Supp. 255, 258 (N.D. Ga. 1982). To the contrary, where no genuine issue as to any material fact exists and where credibility conflicts are absent, summary judgment may be appropriate. Cf., *Losch, supra*. Here, we hold only that on the record thus far developed, reasonable minds could differ as to whether the police officers who apprehended and then interrogated Deary had probable cause to do so based on the information which was then available to them. The resolution of this question is, as we have stated, one which the jury and not the judge must make in the instant context under our precedents. We therefore reverse the grant of summary judgement.

746 F.2d at 192.

To repeat, in the instant case the parties stipulated and defendant conceded in his motion for summary judgment that the issue of good cause for his conduct remained genuinely in dispute.

It goes without saying that the traditional interpretation of Rule 56(c), F.R.Civ.P., in civil rights as well as all other categories of civil litigation, has been that questions regarding motive and good cause are questions of fact for the jury. See, **Ness v. Marshall**, 660 F.2d 517 (3rd Cir. 1981); **Phillips v. Vandygriff**, 711 F.2d 1217 (5th Cir. 1983). Although this Court's holding in **Harlow** that the trial court should determine

the "objective reasonableness" of governmental action as a question of law was not intended to alter the prevailing interpretation of the summary judgment rule, the lower courts are understandably troubled by the ambiguity. See, **Jurgensen, supra**, 745 F.2d at 878.

The Eleventh Circuit's decision in the instant case cannot be squared with the prevailing rule cited above. The record in this case, when read in the light most favorable to the petitioner, demonstrates that defendant denied him his right to attend and bid freely at the public property auction to prevent and in response to Amis' leadership in the "Constitutionalist" organization which seeks a return to the gold standard as a medium for the mandatory payment of state debts.

The record shows that: 1. defendant kept a substantial file on the protest activities of Amis and his organization; 2. no other person, including members of petitioner's group, ever had been required to post a 100% deposit prior to the bidding; and 3. Amis had participated in the public auction of tax certificates many times in the past and always had paid for the certificates in legal tender. Thus defendant's explanation for his action was questionable.

It follows that, even if it were to be determined that Amis lacked a Fourteenth Amendment liberty or property interest in participating in the public auction and profiting from the purchase of certificates, defendant's purposeful retaliation would violate the First Amendment. **Mt. Healthy City Board of Education v. Doyle**, 429 U.S. 274 (1977).

The merit of petitioner's Fourteenth Amendment due process and equal protection claims depends, as the Court of Appeals noted, upon whether defendant had "good cause" for his conduct. In also affirming the summary judgment on the issue of good cause, the Court has departed from the rule of **Deary** and **Briggs, supra**, and such cases as **Nunez v. Superior Oil Co.** (Rubin, J.) and cases cited, 572 F.2d 1119, 1125-27 (5th Cir. 1979), that questions regarding good cause also are for the jury.

The conflict between the Eleventh and Fourth Circuits, on one hand, and precedent cited above from

the Third, First, Fifth, Seventh, Eighth and Ninth Circuits on the other, is an important one, particularly in the context of civil rights actions against local governments or their officials: it implicates the fundamental role of the jury under the Seventh Amendment to resolve disputes between citizen and government where it is alleged that government abused its power in a peremptory fashion. This is an appropriate case to resolve the conflict and provide guidelines to the bar since, as described above, the defendant has stipulated to the existence of material facts in dispute regarding motive and "good cause."

The jury's role in determining motive and good cause is particularly worth underscoring where, as here, the plaintiff is engaging in a disfavored protest against important government policy and is therefore a ready target for discrimination.

Review by this Court will substantially aid trial judges and the bar in resolving such a recurring problem, prevalent in cases brought under 42 U.S.C. 1983, central to the proper administration of justice: if citizens are to retain meaningful access to the Courts, local juries should be allowed to resolve material disputes regarding the motive for local governmental action where that action is reasonably challenged as retaliatory and in bad faith and defended, as in this case, as a reasonable exercise of public duty. More specific guidelines to trial courts from this Court regarding the distinction between jury and non-jury issues will go far toward eliminating unnecessary appeals from the grant or denial of summary judgment.

II. The Issue Of Whether Trial Judges Must Provide An Explanation For The Grant Of Summary Judgment, In Order To Preserve Meaningful Appellate Review, Has Divided The Lower Courts.

The Court of Appeals (App. A-3) cites **Hanson v. Aetna Life & Casualty Co.**, 625 F.2d 573 (5th Cir. 1980), relied on by petitioner, for the principle that a District Court must, to provide due process of law, explain the legal principles governing summary judgment so that

effective appellate review may be sought. The opinion also cites **Church of Scientology of California v. Cazares**, 638 F.2d 1272 (5th Cir. 1981) for the principle that Rule 56, F.R.Civ.P., does not literally require an opinion or statement of reasons. The Ninth Circuit is in agreement with **Cazares** that the trial court is not required to supply any explanation for the grant of summary judgment, **Fromberg Inc. v. Gross Mfg. Co.**, 328 F.2d 803 (9th Cir. 1964). Obviously, however, there is an apparent conflict between the requirements of the Federal Rules and the Due Process clause regarding the obligation upon a District Court in precluding a jury trial through the use of summary judgment.

Even if **Hanson** and **Cazares, supra**, can be reconciled, such a reconciliation should be accomplished by this Court. The issue is not merely of concern to the trial judges who must decide whether or not to devote scarce time to justifying their decisions. The issue is also of importance to litigants who believe they have a legitimate grievance and further believe, under our Rule of Law, that the Courts are open to them in fact as well as in theory. Instructive on this issue, perhaps, is Rule 65(d), F.R.Civ.P., quoted most recently by Justice Rehnquist in **Northern California Power Agency v. Grace Geothermal Corporation**, 105 S.Ct. 459 (1984): "every order granting an injunction and every restraining order shall set forth the reasons for its issuance . . ." The reason for such a requirement, to allow for meaningful appellate review, is equally applicable to orders under Rule 56(c) granting summary judgment.

If this Court is to approve of a one-sentence grant of summary judgment by a judge who admittedly has not read the record, in response to a motion for summary judgment that concedes the existence of material facts and cites no governing legal principles, the losing litigant will believe that the result was not based upon legal principles but upon the identity of parties and the Court. The litigant will then likely seek to re-litigate similar claims in other forums until he prevails before a more sympathetic tribunal or is told why his claim is meritless. Such an increase in the filing of claims and an

inconsistency in results will not promote respect among the people for the rule of law.

It may well be that Rule 56 does not require that a Court state its reasons for granting summary judgment, as **Church of Scientology** held, but the due process clause combined with the statutory right of appeal do, or should, as **Hanson v. Aetna** recognized, reversing the grant of summary judgment and remanding for an explanation, at least where the material facts are disputed as in this case: "We have in practice insisted that district courts record — however informally — their reasons for entering summary judgment, at least where their underlying holdings would be otherwise ambiguous," 625 F.2d at 575. See also, **Landau v. Barter Const., Co.**, 657 F.2d 158 (7th Cir. 1981) (similarly vacating summary judgment for a statement of reasons), and **Johnson Grain Co. v. Chemical Interchange Co.**, 541 F.2d 207 (8th Cir. 1976): "The District Court's reasoned analysis should cover in detail why the various exhibits do not create any issue of material fact. Further, there should be an indication of the principles of law the district court found to be dispositive," 657 F.2d at 164.

The thoughtful, lengthy opinion by the Court of Appeals in **Church of Scientology** makes clear that the appellate Court took pains in that case to review the record, assess the plaintiff's contentions, and apply consistent legal principles to the case in support of the summary judgment, so that the absence of an explanation by the trial court did not prejudice the plaintiff. By contrast, in the instant case neither the defendants nor the District Court gave any indication of the legal principles that governed the dispute. The Court of Appeals' opinion is likewise perfunctory and deficient in citation to authority, so that it is still impossible to ascertain with certainty which legal principles or precedent were applied to the case. The inability of a losing party to find a legal basis at the trial or appellate level for the result in a particular case, especially a civil rights case against government officials, undercuts the very purpose of the underlying legal guarantees, including the Bill of Rights and Civil Rights Act.

Certainly it is inordinately difficult to present the constitutional issues to a reviewing court when there are, in fact, no substantive issues on appeal because the lower courts have not explained their judgments. See, in accord, **Brown v. Gamm**, 525 F.2d 60 (8th Cr. 1975). The necessary implication is that the paucity of explanation was intended to disable meaningful appellate review.

The need for an independent, diverse, non-ideological judiciary which makes clear through its use of precedent that it is applying a consistent rule of law to disputes between government and citizen cannot be overemphasized. Unexplained grants of summary judgment should be held to be a denial of due process of law as precluding meaningful appellate review, guaranteed by statute, in our system of laws, at least in the face of a stipulation by the parties that material facts remain in dispute.

CONCLUSION

For the foregoing reasons the Writ of Certiorari should issue.

Respectfully submitted,

James F. Ponsoldt
Counsel of Record for Petitioner
305 Great Oak Drive
Athens, Georgia 30609
404/542-7668

John E. Hendry
2958 Cranford Avenue
Fort Myers, Florida 33901
813/334-6645

In The

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 84-3107

Non-Argument Calendar

JOHN C. AMIS, JR.
Plaintiff-Appellant,

versus

DICK STEELE, Lee County
Tax Collector, and LEE COUNTY,
a political subdivision of
the State of Florida,
Defendants-Appellees

Appeal from the United States District Court for the Middle District of Florida

---

(September 6, 1984)

Before RONEY, FAY and JOHNSON, Circuit Judges.

PER CURIAM:

Plaintiff John C. Amis, Jr. sued Dick Steele, the Tax Collector of Lee County, for requiring Amis to post a deposit before he could bid at a public auction of tax certificates. Amis sought $50,000 compensatory damages, $150,000 punitive damages, preliminary and permanent injunctions, attorney's fees, costs, and a jury trial. We affirm the summary judgment for defendant.

Fla. Admin. Code R. 12D-12.20 provides:

> For good cause shown, the tax collector may require a prospective bidder to make a deposit prior to allowing the bidder to bid at the sale.

The "good cause" which precipitated the tax collector's action was prior experience in which the plaintiff took an unqualified and unyielding position that payment of a debt in legal tender violates the United States Constitution. Amis had sought to make some 40 individual payments of his taxes with Public Office Money Certificates. Steele had received advice of counsel that payment of taxes in any form other than legal tender is not acceptable. Upon seeing Amis in the pool of bidders, Steele had him instructed that a deposit on his bid amount would be required before he could be issued a bidder's number.

The response of Amis and his affidavit to the motion for summary judgment do not show there to be any genuine issue as to any material fact. Although appellant's brief argues that he has a valid 42 U.S.C.A. § 1983 cause of action, focusing on procedural due process, equal protection and first amendment grounds, neither the facts nor the cases cited support the arguments.

Appellant's major claim seems to be the district court simply entered an order granting summary judgment without opinion or statement of reasons. Fed. R. Civ. P. 56 does not require an opinion or statement of reasons. **Church of Scientology of California v. Cazares**, 638 F.2d 1272 (5th Cir. 1981). Although reasons are always helpful, and sometimes necessary for effective appellate review, **Hanson v. Aetna Life & Casualty Co.**, 625 F.2d 573 (5th Cir. 1980), their absence will not mandate reversal where the decision is not ambiguous or unascertainable on a simple record.

AFFIRMED.

App. B.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOHN C. AMIS, JR.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	Case No. 82-179-Civ-Ft.M-GC
	)	
DICK STEELE,	)	
Lee County Tax Collector,	)	
and LEE COUNTY,	)	
a political subdivision of	)	
the State of Florida,	)	
Defendants.	)	
	)	

ORDER ON MOTION FOR SUMMARY JUDGMENT

THIS CAUSE coming on for hearing on Defendants' Motion for Summary Judgment, and the Court having heard argument of counsel for the respective parties, and being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED that the Defendants' Motion for Summary Judgment be and the same is hereby granted.

DONE and ORDERED in chambers at Tampa, Florida, this day 9th day of January, 1984.

/S/ Robert D. Morgan
UNITED STATES DISTRICT JUDGE

COPIES PROVIDED TO:

MS. MARJORIE STARNES
JOHN E. HENDRY, ESQUIRE
PATRICK E. GERAGHTY, ESQUIRE

App. C.-1

In The

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 84-3107

Non-Argument Calendar

D.C. Docket No. 82-00179

JOHN C. AMIS, JR.
Plaintiff-Appellant,

versus

DICK STEELE, Lee County
Tax Collector, and LEE COUNTY,
a political subdivision of
the State of Florida,
Defendants-Appellees

Appeal from the United States District Court for the Middle District of Florida

---

Before RONEY, FAY and JOHNSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: September 6, 1984
For the Court: Spencer D. Mercer, Clerk

By: /S/
Deputy Clerk

ISSUED AS MANDATE: November 29, 1984

In The

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 84-3107

JOHN C. AMIS, JR.
Plaintiff-Appellant,

versus

DICK STEELE, Lee County
Tax Collector, and LEE COUNTY,
a political subdivision of
the State of Florida,
Defendants-Appellees

Appeal from the United States District Court for the Middle District of Florida

---

(November 1, 1984)

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Before RONEY, FAY and JOHNSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/S/ Paul H. Roney

United States Circuit Judge